United Nations E/C.12/CAN/CO/6

Economic and Social Council

Distr.: General
23 March 2016

Original: English

Committee on Economic, Social and Cultural Rights

Concluding observations on the sixth periodic report of Canada*

1. The Committee on Economic, Social and Cultural Rights considered the sixth periodic report of Canada on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/CAN/6) at its 6th and 7th meetings (E/C.12/2016/SR.6-7), held on 24 and 25 February 2016, and adopted the following concluding observations at its 20th meeting, held on 4 March 2016.

A. Introduction

2. The Committee welcomes the sixth periodic report submitted by the State party and the supplementary information provided in the replies to the list of issues (E/C.12/CAN/Q/6/Add.1). The Committee also welcomes the oral replies provided by the high-level delegation.

B. Positive aspects

3. The Committee welcomes the State party's ratification of the Convention on the Rights of Persons with Disabilities, in 2010.

4. The Committee notes with appreciation the measures taken by the State party to enhance the promotion and protection of economic, social and cultural rights, including:

(a) The repeal of section 67 of the Canadian Human Rights Act in 2008, thus enabling people to file complaints with the Canadian Human Rights Commission regarding discrimination resulting from the application of the Indian Act;

(b) The restoration of the Interim Federal Health Program in December 2015 for certain categories of refugees and asylum seekers that had been eliminated in 2012;

(c) The State party's decision in 2015 to establish a national inquiry into murders and disappearances of indigenous women and girls;

(d) The State party's commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples (2007);

* Adopted by the Committee at its fifty-seventh session (22 February-4 March 2016).

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(e) The State party's commitment to reinstate the long-form census and the launch of the new Canadian Survey on Disability;

(f) The recent appointment of the new federal Cabinet, in which 50 per cent of new ministers are women and 17 per cent are "visible minorities".

C. Principal subjects of concern and recommendations

Domestic application of the Covenant

5. The Committee is concerned that, despite certain promising developments and the Government's commitment to review its litigation strategies, economic, social and cultural rights remain generally non-justiciable in domestic courts. The Committee is also concerned at the limited availability of legal remedies for victims in the event of a violation of Covenant rights, which may disproportionately impact disadvantaged and marginalized groups and individuals, including homeless persons, indigenous peoples and persons with disabilities.

6. **The Committee recommends that the State party take the legislative measures necessary to give full effect to the Covenant rights in its legal order and ensure that victims have access to effective remedies. The Committee recommends that the State party implement its commitment to review its litigation strategies in order to foster the justiciability of the economic, social and cultural rights. The State party should engage civil society and organizations of indigenous peoples in that revision, with a view to broadening the interpretation of the Canadian Charter of Rights and Freedoms, notably sections 7, 12 and 15, to include economic social and cultural rights, and thus ensure the justiciability of Covenant rights. The Committee also recommends that the State party improve human rights training programmes in order to ensure better knowledge, awareness and application of the Covenant, in particular among the judiciary and law enforcement and public officials. The Committee refers to its general comments No. 3 (1990) on the nature of States parties' obligations and No. 9 (1998) on the domestic application of the Covenant.**

Intergovernmental arrangements under the federal system

7. The Committee welcomes the reassurance provided by the State party that its federal structure may enhance implementation through local and regional accountability measures and notes that the State party has referred in its common core document to section 36 of the Constitution Act, 1982 in that context. The Committee is concerned, however, that funding and other agreements with provinces, territories and municipalities do not establish responsibilities for the implementation of Covenant rights at the different levels.

8. **The Committee recommends that economic, social and cultural rights be incorporated into intergovernmental agreements and enabling legislation for municipalities, and that transfer of payments take into due account compliance with Covenant rights.**

Maximum available resources

9. The Committee is concerned about stagnation in the levels of social spending as a share of gross domestic product. The Committee is also concerned at the low levels of corporate tax rates if compared with other rich countries, and about the disproportionate impact of austerity measures introduced in a number of provinces on disadvantaged and marginalized groups and individuals (art. 2 (1)).

10. **The Committee recommends that the State party increase national spending to guarantee Covenant rights so as to achieve the progressive realization of economic, social and cultural rights. The Committee urges the State party to adopt and implement a tax policy that is adequate and socially equitable and improves tax collection, so as to ensure the mobilization of resources sufficient for implementing economic, social and cultural rights, with special attention paid to disadvantaged and marginalized individuals and groups. In that regard, the Committee encourages the State party to collect disaggregated data based on the prohibited grounds of discrimination. The Committee recommends that the State party monitor closely the introduction of austerity measures by provinces and ensure that they do not undermine the minimum core content of all the Covenant rights, and that such austerity measures are not discriminatory and are temporary, necessary and proportionate. The Committee refers the State party to the letter sent by the Committee's Chairperson on austerity measures to all States parties on 16 May 2012.**

Official development assistance

11. The Committee is concerned about the level of official development assistance (0.24 per cent of gross national income).

12. **The Committee recommends that the State party raise the official development assistance level so as to meet the internationally recognized target of 0.7 per cent of gross national income, and pursue a human rights-based approach in its development cooperation policy.**

Free, prior and informed consent of indigenous peoples

13. The Committee is concerned that the right to free, prior and informed consent of indigenous peoples to any change to their lands and territories is not adequately incorporated in domestic legislation and not consistently applied by the State party. The Committee, while acknowledging the State party's statement that this issue will be revised by the new Government, remains concerned about the lack of formal mechanisms and processes that enable meaningful consultation with indigenous peoples, particularly in the context of the operation of extractive industries.

14. **The Committee recommends that the State party fully recognize the right to free, prior and informed consent of indigenous peoples in its laws and policies and apply it in practice. In particular, it recommends that the State party establish effective mechanisms that enable meaningful participation of indigenous peoples in decision-making in relation to development projects being carried out on or near their lands or territories. The Committee also recommends that the State party effectively engage indigenous peoples in the formulation of legislation that affects them.**

Business and economic, social and cultural rights

15. The Committee is concerned that the conduct of corporations registered or domiciled in the State party and operating abroad is, on occasion, negatively impacting on the enjoyment of Covenant rights by local populations. The Committee is also concerned about the limited access to judicial remedies before courts in the State party by victims and that existing non-judicial remedial mechanisms, such as the Office of the Extractive Sector Corporate Social Responsibility Counsellor, have not always been effective. The Committee is further concerned about the lack of impact assessments explicitly taking into account human rights prior to the negotiation of international trade and investments agreements.

16. **The Committee recommends that the State party strengthen its legislation governing the conduct of corporations registered or domiciled in the State party in their activities abroad, including by requiring those corporations to conduct human rights impact assessments prior to making investment decisions. It also recommends that the State party introduce effective mechanisms to investigate complaints filed against those corporations, and adopt the legislative measures necessary to facilitate access to justice before domestic courts by victims of the conduct of those corporations. The Committee further recommends that the State party ensure that trade and investment agreements negotiated by Canada recognize the primacy of its international human rights obligations over investors' interests, so that the introduction of investor-State dispute settlement procedures shall not create obstacles to the full realization of Covenant rights.**

Non-discrimination

17. The Committee is concerned that social condition is not included among the prohibited grounds of discrimination in the Canadian Human Rights Act (art. 2).

18. **The Committee recommends that the State party include social condition among the prohibited grounds of discrimination in the Canadian Human Rights Act, and in the provincial human rights acts, as necessary. The Committee draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.**

Indigenous peoples

19. The Committee is concerned, in spite of the pledge made by the State party to address the situation of indigenous peoples, about the persisting socioeconomic disparities between indigenous and non-indigenous peoples, and by disparities in relation to poverty prevalence and access to basic rights, including housing, education and health-care services. The Committee is also concerned about the decrease in the already insufficient funding allocated to indigenous peoples living both on and off reserves, a situation which is further exacerbated by the jurisdictional disputes between federal and provincial governments on funding to indigenous peoples (art. 2 (2)).

20. **The Committee recommends that the State party, in consultation with indigenous peoples:**

(a) **Implement and strengthen its existing programmes and policies to improve the enjoyment of Covenant rights by indigenous peoples;**

(b) **Increase federal and provincial funding to indigenous peoples commensurate to their needs, and work out solutions to ensure coordinated and accountable implementation of indigenous peoples' rights by all jurisdictions;**

(c) **Implement the recommendations put forward by the Special Rapporteur on the rights of indigenous peoples following his mission to Canada in 2013 (see A/HRC/27/52/Add.2);**

(d) **Promote and apply the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples;**

(e) **Consider ratifying the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169).**

Equality between women and men

21. The Committee is concerned at the discrimination against women in the State party in many areas of economic, social and cultural rights. In particular, it is concerned that, owing to women's primary role as caregivers in the family, women are overrepresented in part-time work and in low-paid sectors, thus perpetuating the gender segregation in the workplace and the gender wage gap. The Committee is further concerned about the remaining gender-based discriminatory provisions in the Indian Act concerning Indian status classification (art. 3).

22. **The Committee recommends that the State party develop and implement a comprehensive national gender equality policy to address the structural factors leading to gender inequality, in close cooperation with provinces and territories, as well as in consultation with civil society organizations. The Committee also recommends that the State party:**

(a) **Effectively implement and improve existing legislation on equal pay between men and women, at provincial and territorial levels, including the adoption of effective enforcement mechanisms, and include temporary special measures such as quotas;**

(b) **Repeal the remaining discriminatory provisions in the Indian Act;**

(c) **Pursue its commitment to provide affordable childcare services across the country so as to assist parents to balance family and employment responsibilities;**

(d) **Adopt targeted measures to increase access to social assistance and employment opportunities for women with disabilities;**

(e) **Intensify its efforts to eliminate the gender-role stereotypes and prejudices, including through awareness-raising campaigns.**

Unemployment

23. The Committee is concerned that certain disadvantaged and marginalized groups and individuals continue to be disproportionately affected by unemployment, including persons with disabilities, African-Canadians, the youth, recent immigrants, minorities and indigenous peoples (art. 6).

24. **The Committee recommends that the State party step up its efforts to address unemployment faced by disadvantaged and marginalized groups and individuals. The Committee also recommends that the State party strengthen the enforcement and monitoring of the Employment Equity Act and take all appropriate measures to strengthen and expand its coverage. The Committee further recommends that the State party take measures to ensure the adoption of employment equity legislative and policy measures in all jurisdictions, in collaboration with provinces and territories.**

Minimum wage

25. While noting that the minimum wage has been adjusted in all provinces during the period under review, the Committee is concerned that in all provinces it remains inadequate and falls short of living costs (art. 7).

26. **The Committee recommends that the State party ensure that the minimum wage is increased in all jurisdictions and adjusted and regularly indexed to the cost of living, so as to allow a decent living for all workers and their families.**

Just and favourable conditions of work

27. The Committee welcomes the changes introduced to the Live-In Caregiver Program. It remains concerned, however, that certain categories of foreign workers, including temporary and seasonal migrant workers, are vulnerable to exploitation by employers, especially as their work permit is tied to a specific employer (art. 7).

28. **The Committee recommends that the State party step up its efforts to prevent labour exploitation of temporary and seasonal migrant workers, among others by increasing inspection visits, improving regulation of recruitment agencies and replacing the employer-specific work permit with a type-of-work permit. The Committee refers to its general comment No. 23 (2016) on the right to just and favourable conditions of work.**

Social security

29. The Committee is concerned at the inadequate social assistance rates in all provinces and for all households and at the lack of accountability provisions in the Federal Social Transfer. The Committee is also concerned about the existence of clawback provisions in some jurisdictions that allow deducting of child benefits from social assistance benefits. Furthermore, the Committee expresses its concern at recent amendments to Bill C-43 which allow provinces to deny access to social assistance by refugee claimants and other persons without permanent status in Canada (art. 9).

30. **The Committee recommends that the State party ensure that social assistance rates are increased in all provinces to levels that allow a decent living for beneficiaries and their families so as to ensure an effective income safety net. The State party should also integrate accountability provisions in the Federal Social Transfer as a means to allow monitoring of how the funds are allocated to social assistance benefits. Furthermore, the State party is requested to ensure that all clawback provisions in provincial jurisdictions are repealed and the recent amendments introduced to Bill C-43 reviewed, with a view to ensuring that refugee claimants and other persons without permanent status in Canada can access social assistance without discrimination.**

Employment insurance

31. The Committee is concerned about the decrease in the number of the unemployed who are eligible for employment insurance, as well as at the insufficient levels of those benefits. In particular, the Committee expresses its concern at the stringent conditions for qualifying for employment insurance and that some workers are often unable to access employment insurance benefits following the termination of their work contract (art. 9).

32. **The Committee recommends that the State party revise the eligibility thresholds for and amounts of employment insurance, with a view to ensuring that all workers, including part-time and temporary foreign workers, can access adequate employment insurance benefits without discrimination.**

Violence against women

33. The Committee is concerned about the persistence of violence against women in the State party, which is particularly prevalent among indigenous women and girls and further exacerbated by the economic insecurity of women. The Committee is also concerned that, in some cases, owing to the inadequacy and insufficient number of shelters, combined with women's inability to afford housing and the inadequate social assistance, women victims of violence are unable to escape violent situations (arts. 10 and 11).

34. **The Committee recommends that the State party address violence against women and girls in a holistic manner. Inter alia, the State party is encouraged to study the link between poverty, ethnic origin and vulnerability to violence and take effective measures aimed at preventing and eradicating violence against women and girls. The Committee also recommends that the State party step up its efforts to protect victims of violence, including by ensuring the availability of a sufficient number of adequate shelters for victims of violence, as well as long-term housing solutions and adequate social assistance.**

Children in foster care

35. The Committee is concerned at the higher likelihood that indigenous children be placed in childcare institutions, which is further exacerbated by the inadequate funding for child welfare services to indigenous peoples living on reserves. The Committee is also concerned that African-Canadian children are overrepresented in childcare institutions (art. 10).

36. **The Committee recommends that the State party:**

(a) **Review and increase its funding to family and child welfare services for indigenous peoples living on reserves and fully comply with the decision of the Canadian Human Rights Tribunal (January 2016) concerning the provision of family child welfare services to First Nations children and families living on reserves;**

(b) **Implement the recommendations of the Truth and Reconciliation Commission (2015) with regard to the Indian Residential Schools;**

(c) **Take effective measures to address the root causes of overrepresentation of African-Canadian children in care institutions.**

Poverty

37. Considering the advanced level of development of the State party, the Committee is concerned about the significant number of people living in poverty. It is further concerned that indigenous peoples, persons with disabilities, single mothers and minority groups continue to experience higher rates of poverty and at the limited effectiveness of measures taken to address that issue (art. 11).

38. **The Committee recommends that the State party take all measures necessary to combat poverty more effectively while paying particular attention to groups and individuals who are more vulnerable to poverty. The Committee recommends that the State party, in collaboration with provinces, territories and indigenous peoples and consultation with civil society organizations, implement a human rights-based national anti-poverty strategy, which includes measureable goals and timelines, as well as independent monitoring mechanisms. The Committee further recommends that the State party ensure that provinces and territories' anti-poverty policies are human rights-based and aligned with the national strategy.**

Right to housing

39. The Committee is concerned about the persistence of a housing crisis in the State party. It is particularly concerned at: (a) the absence of a national housing strategy; (b) the insufficient funding for housing; (c) the inadequate housing subsidy within the social assistance benefit; (d) the shortage of social housing units; and (e) increased evictions related to rental arrears (art. 11).

40. **The Committee urges the State party to develop and effectively implement a human-rights based national strategy on housing and ensure that all provincial and**

territorial housing strategies are aligned with the national strategy. In the light of its general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions, the Committee recommends that the State party:

(a) **Progressively increase federal and provincial resources allocated to housing and reinforce the housing subsidy within the social assistance benefit so as to be commensurate with living costs;**

(b) **Take effective measures to substantially increase the availability of social and affordable housing units;**

(c) **Regulate rental arrangements with a view to ensuring that tenants enjoy the right to affordable and decent housing and are not vulnerable to forced evictions or homelessness;**

(d) **Ensure that its legislation on forced evictions is compatible with international norms, particularly with respect to its obligation to ensure that no persons find themselves homeless or victims of other human rights violations due to evictions, and that compensation or alternative accommodation is provided to victims.**

Homelessness

41. The Committee is concerned at the increasing number of homeless persons in the State party, the lack of adequate measures to prevent homelessness, the shortage of adequate emergency shelters and the existence of anti-camping and other by-laws that penalize homeless persons in some jurisdictions (art. 11).

42. **The Committee recommends that the State party adopt a national strategy on homelessness to examine the root causes of the increase in the number of homeless persons and collect data on the extent of homelessness, disaggregated by geographic location, ethnicity, sex and social condition, and to combat homelessness. The Committee also recommends that the State party take effective measures to ensure the availability of adequate emergency shelters throughout the country and repeal provincial by-laws that penalize homeless persons for finding solutions necessary for their survival and well-being.**

Adequate standard of living

43. The Committee is concerned that indigenous peoples, notably the Inuit and First Nations, encounter poor housing conditions, including overcrowding, which generate, among other issues, health challenges for the communities concerned. The Committee is also concerned at the restricted access to safe drinking water and to sanitation by the First Nations, as well as the lack of water regulations for the First Nations living on reserves (art. 11).

44. **The Committee urges the State party to intensify its efforts to address the indigenous peoples' housing crisis, in consultation with indigenous governments and organizations. The Committee also urges the State party to live up to its commitment to ensure access to safe drinking water and to sanitation for the First Nations while ensuring their active participation in water planning and management. In doing so, the State party should bear in mind not only indigenous peoples' economic right to water but also the cultural significance of water to indigenous peoples.**

Housing for persons with disabilities

45. The Committee is concerned that persons with psychosocial and intellectual disabilities continue to be placed in care institutions due to a lack of adequate housing for

them. It is also concerned by the increased rate of incarceration of these persons and the excessive use of solitary confinement (arts. 11 and 12).

46. **The Committee recommends that a disability perspective is integrated in all housing plans and policies at all levels. To that end, the Committee recommends that the State party increase the availability of affordable and social housing units for persons with psychosocial and intellectual disabilities, as well as community-based services. The Committee also recommends that the State party ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities.**

Right to food

47. The Committee welcomes the information provided by the delegation on the development of a national food policy. The Committee remains concerned, however, at the rates of food insecurity in the State party, the increased reliance on food banks, particularly in northern Canada, and the deficiencies of the Nutrition North Canada food programme (art. 11).

48. **The Committee recommends that the State party take effective measures to address the recommendations put forward in the report of the Special Rapporteur on the right to food following his mission to Canada in 2012 (see A/HRC/27/52/Add.2). The Committee recommends that the State party ensure the food policy is human rights-based and is developed in close collaboration with provinces, territories and indigenous peoples, as well as in consultation with civil society organizations. The Committee recommends that the State party pay particular attention to addressing food insecurity in northern Canada, and take effective measures to protect access to traditional food. To that end, the State party is encouraged to review the Nutrition North Canada programme, giving due attention to the necessary transparency and accountability provisions, and to extend the programme's coverage so as to reach those most affected by food insecurity.**

Right to health

49. The Committee is concerned that undocumented immigrants in the State party are denied access to health care. The Committee is also concerned that drug users face barriers in access to health-care services due to stigma and the punitive approach of the 2007 National Anti-Drug Strategy, which has had negative consequences on the health of drug users and discriminatory effects on disadvantaged and marginalized groups and individuals, such as African-Canadians, indigenous peoples and women (art. 12).

50. **The Committee recommends that the State party ensure access to the Interim Federal Health Program without discrimination based on immigration status, in line with the Human Rights Committee's recommendation of 2015 (see CCPR/C/CAN/CO/6, para. 12). The Committee also recommends that the State party ensure that its national drug law and the National Anti-Drug Strategy incorporate a public-health approach and be harm-reduction-based, and take effective measures to facilitate access to appropriate health care, psychological support services and rehabilitation for drug users.**

Sexual and reproductive health rights

51. The Committee welcomes the information provided by the delegation on measures taken to facilitate access to legal abortion services. It remains concerned, however, at disparities in access to such services and to affordable contraceptives (art. 12).

52. **The Committee recommends that the State party ensure access to legal abortion services in all provinces and territories. The Committee also recommends**

that the State party ensure that physicians' conscientious objection does not impede women's access to legal abortion services. The Committee also recommends that affordable contraceptives be made accessible and available to all, and in particular those living in remote areas and those living in poverty. The Committee refers to its general comment No. 22 (2016) on the right to sexual and reproductive health.

Climate change and environmental protection

53. The Committee is concerned that climate change is negatively affecting the enjoyment of Covenant rights by indigenous peoples. The Committee is also concerned that regulations governing environmental protection have been weakened in recent years, notably by the enactment of the Budget Bill C-38 (2012) and in the context of extractive industries (art. 12).

54. **The Committee recommends that the State party address the impact of climate change on indigenous peoples more effectively while fully engaging indigenous peoples in related policy and programme design and implementation. The Committee also recommends that the State party ensure that the use of non-conventional fossil energies is preceded by consultation with affected communities and impact assessment processes. It also recommends that the State party pursue alternative and renewable energy production. The Committee recommends that the State party further strengthen its legislation and regulations, in accordance with its international human rights obligations, and ensure that environmental impact assessments are regularly carried out in the context of extractive industry activities.**

Right to education

55. The Committee is concerned by the continuous lower educational and academic achievements of indigenous and African-Canadian children. The Committee is particularly concerned by the latter's high dropout rates at all school levels. The Committee is also concerned about reported barriers for children whose parents have no legal status in accessing schooling (arts. 13).

56. **The Committee recommends that the State party reinforce its efforts to address the long-standing issues faced by indigenous and African-Canadian children in accessing and completing primary and secondary school. In doing so, the Committee recommends that the State party develop interventions, in consultation with the affected communities, aimed at combating school dropout, including by putting an end to the unnecessary measures of expelling and suspending pupils. The Committee further recommends the State party ensure access to free compulsory schooling for all children without discrimination.**

Post-secondary education

57. The Committee is concerned at the increasing tuition fees in post-secondary education, combined with decreasing governmental funding, which disproportionately impacts students and families with low income and indigenous peoples (art. 13).

58. **The Committee recommends that the State party take steps to increase the budget allocated to publicly funded post-secondary education system, with a view to facilitating access to higher education to everyone regardless of their socioeconomic or ethnic background.**

Cultural rights

59. The Committee is concerned that many indigenous languages are endangered, despite some measures taken. It is also concerned about the inadequate funding for and

promotion of African art and culture, which adds to the structural discrimination faced by that group in the enjoyment of economic, social and cultural rights in the State party (art. 15).

60. **The Committee recommends that the State party step up the efforts needed to promote the preservation and use of indigenous languages, including by ensuring that provinces and territories teach and use indigenous language at schools, where appropriate. The Committee recommends that the State party promote and increase the funding to the art and culture of African-Canadians and, to that end, use the International Decade for People of African Descent, proclaimed by General Assembly, as a vehicle to promote and protect the human rights of that group.**

D. Other recommendations

61. **The Committee encourages the State party to ratify the Optional Protocol to the the International Covenant on Economic, Social and Cultural Rights.**

62. **The Committee recommends that the State party take steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights, in order to facilitate the assessment of progress achieved by the State party in the compliance of its obligations under the Covenant for various segments of the population. In that context, the Committee refers the State party to, inter alia, the conceptual and methodological framework on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (see HRI/MC/2008/3).**

63. **The Committee requests that the State party disseminate the present concluding observations widely at all levels of society at national, provincial and territorial levels, particularly among parliamentarians, public officials and judicial authorities, and that it inform the Committee in its next periodic report about the steps taken to implement them. The Committee also encourages the State party to engage non-governmental organizations and other members of civil society in the process of consultation at the national level prior to the submission of its next periodic report.**

64. **The Committee requests the State party to submit its seventh periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 March 2021. It also invites the State party to update its common core document, as necessary and in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, chap. I).**